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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/691,273	10/18/2000	Robert Anthony Marin	TK-3410-US-NA	4960

23906 7590 10/19/2005

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EXAMINER

SALVATORE, LYNDIA

ART UNIT PAPER NUMBER

1771

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/691,273

Applicant(s)

MARIN ET AL.

Examiner

Lynda M. Salvatore

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-4, 7-18 and 21-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-4, 7-18 and 21-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's remarks filed 7/27/05 have been fully considered and entered. Applicant's remarks, however, are not found persuasive of patentability for reasons set forth herein below.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 2-4, 7-18, and 24-30 stand rejected under 35 U.S.C. 103(a) as being unpatentable over McGinty et al., US 6,010,970 in view of Blades et al., 3,081,519. Alternatively, claims 2-4, 7-18, and 24-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harriss et al., WO 98/39509 in view of Blades et al., 3,081,519

Applicant argues a lack of motivation to combine references. Specifically, Applicant argues that the secondary reference of Blades et al., teach that the plexifilamentary strands so formed are well suited for the production of woven and knitted fabrics rather than the claimed non-woven fabrics. Applicant also opines that one of ordinary skill in the art would be motivated to use the lowest possible spin temperature (190°C) in order to save costs on energy. Finally, Applicant argues a lack of motivation to combine references on the grounds that the secondary reference of Blades et al., exemplifies using methylene chloride as the spin agent rather than the claimed saturated hydrocarbons (a mixture of pentane/cyclopentane). These arguments are not found persuasive.

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With respect to Applicant's arguments that Blades et al., discloses that the so formed strands are well suited for woven and knitted fabrics, it is respectfully pointed out that non-woven fabrics are known alternatives to said fabrics. There is no suggestion in the Blades et al., reference that would teach away from forming non-woven fabrics from the so formed plexifilamentary strands. In fact, Blades et al., teach that the so formed plexifilamentary strands can be beaten and chopped (column 7, 16-20). The Examiner asserts that it is well known in the textile art that chopped fibers are used to form non-woven fabrics.

With respect to Applicant's opinion that one of ordinary skill in the art would employ the lowest possible spinning temperature in order to save money, the arguments of counsel cannot take the place of evidence in the record. In re Schulze, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965); In re Geisler, 116 F.3d 1465, 43 USPQ2d 1362 (Fed. Cir. 1997) ("An assertion of what seems to follow from common experience is just attorney argument and not the kind of factual evidence that is required to rebut a prima facie case of obviousness."). See MPEP § 716.01(c) for examples of attorney statements which are not evidence and which must be supported by an appropriate affidavit or declaration. It is the position of the Examiner that since Blades et al., teach spin temperatures ranging from 190-216°C it would be improper to favor the lower spin temperatures over the higher spin temperatures. It appears that that the broad range of temperatures taught by Blades et al., produces equally suitable plexifilamentary strands. Applicant is invited to factually evidence otherwise.

With regard to Applicant's arguments regarding the specific spin agent exemplified by Blades et al., it is respectfully pointed out that Blades et al., was relied upon to teach that the claimed spinning temperatures are known in the art. However, Blades et al., does teach

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employing a wide variety of spin agents including hydrocarbons (column 8, 20-31). As such, it is the position of the Examiner that though said spin agents are not exemplified or taught as preferred it would be improper to ^{ignore} such a disclosure.

4. Claims 21-23 stand rejected under 35 U.S.C. 103(a) as being unpatentable over McGinty et al., US 6,010,970, or Harriss et al., WO 98/39509 in view of Blades et al., 3,081,519 as applied to claim 29 above and further in view of Bisbis et al., US 5,919,539

The above rejection from which claims 21-23 depend from is maintained. Applicant has not presented any new arguments for which to consider.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynda M. Salvatore whose telephone number is 571-272-1482. The examiner can normally be reached on M-F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

October 17, 2005

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A handwritten signature in black ink, appearing to read 'Terrel Morris', is written over a rectangular stamp.

TERREL MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1771